

# Paying district court fines with jail time debated in Benton County

Tri-City Herald

Published: November 2, 2013



Judge Katy Butler presides over Benton County District Court recently in Kennewick. The court for more than two decades has been ordering people who are delinquent on payments to participate on work crew or sit in jail in exchange for having their fines and costs eliminated, but that practice has been criticized because cities have to pay the daily bed rate for inmates.

KAI-HUEI YAU — Tri-City Herald

Judge Katy Butler couldn't ignore the almost \$11,000 owed by the 28-year-old Kennewick man.

She believes in giving criminals a second and third chance to pay their Benton County District Court fines. She knows people can lose their jobs or have unexpected family expenses.

But when Brian J. Colvin came before her last week and asked to delay his payments on nine cases for a year and a half while he does another prison stint, she'd had enough.

She ordered him to the county jail for about 220 days.

"When I hear you've only had 10 months out on the streets (since 2009), it's because you keep committing crimes ... and the fines escalate and escalate and escalate," said Butler, who told Colvin to take a good look at his life while locked up.

"I guess we getting them out of the way now, huh?" an agitated Colvin mumbled to the judge. "Just because I committed something doesn't mean that I'm not trying out there. Just because I resort to drugs or resort to selling drugs ... it doesn't mean I don't have morals or values."

When Colvin is done in late May, his debt to the court will be wiped from the books. But the city of Kennewick will get a \$15,000 bill for this jail stay.

The practice of ordering inmates to serve out their fines and court costs in exchange for credit has been in place in Benton County District Court for more than two decades.

It's one of the only courts in Washington to take advantage of a state law allowing it. Many just turn the nonpayers over to collection agencies.

Now some criminal justice officials aren't sure it's the best way to handle nonpayers and plan to meet with Benton County commissioners Nov. 18 at the Benton County Justice Center in Kennewick.

The issue also is facing a legal challenge from a Tri-City woman who contends she never got a proper hearing and shouldn't be sent to jail because she has a very limited income.

In recent years, prosecutors, defense attorneys and law enforcement leaders have said there's an imbalance between holding the criminal accountable and the cost to the public, and the issue needs to be reviewed.

"When a prisoner is allowed to sit their time out in jail, the cities are still incurring the expense of incarceration. And I think it's prudent upon us to look at the reasons for the incarceration, as well as the cost, and see if the public is being best served by that practice," said West Richland Police Chief Brian McElroy. "There may be other opportunities out there that gets accountability for public safety and community dollars."

City and county officials told the Herald they're not even sure what the policy is costing them each year.

They've suggested capping the number of jail days ordered to make it more cost effective, but mostly they want to make sure it's still the best alternative for people who won't pay.

### Judges assess ability to pay

The policy began in 1991 or earlier by then-District Court Judges Craig Matheson and Eugene F. Pratt. The two started a probation department in the court to monitor serious offenders and their court-ordered treatment and to track the collection of fines.

At that time, the court turned over all fines to a collections agency, but Matheson recalls that a lot of people ignored their judgments, so the judges created a compliance docket.

Delinquents were brought before the judges and given the chance to explain why they weren't paying. Their fines and costs would be forgiven if it was found that they had no money and were unable to work, said Matheson, who retired as a judge in Benton-Franklin Superior Court in April.

A person was locked up only if it was a matter of them being unwilling to fork over the money and their original crime was punishable by jail time, he said. Work crews did not exist.

Court costs can include filing fees, court-appointed attorney fees, probation costs, restitution and other fees, such as a breathalyzer charge in the case of a drunken driving conviction.

Fines are negotiated between the prosecutor and defense lawyer. Some charges carry a mandatory minimum amount set by state law, like \$693 for a first-time DUI.

District Court has jurisdiction over collecting the costs and fines during the probation period, typically two or five years, but can make a civil judgment and extend it to 10 years.

Currently, a person is ordered to court after they're delinquent for three months. A judge assesses their current and future ability to pay and may adjust the monthly amount owed -- which can be as minimal as \$25 or even lower -- or require a good faith attempt with a deadline for a larger payment.

A warrant is issued for their arrest if they skip out on court.

If they're delinquent again, they can ask for a hearing to explain their situation. Judges sometimes waive the fines if the person can prove they have a serious medical condition and dealing with it is so overwhelming that there's no way they can pay.

But if the judge decides they've had enough chances and it's time to do work crew or sit in jail, they first are given the option to meet with an attorney.

"Your phone would get canceled much faster than we would get you for nonpayment," District Court Judge Robert Ingvalson told the Herald. "We are the easiest collection agency you'll ever

deal with. There's no interest charged and we extend payments for long periods of time, but we don't tolerate being ignored well."

Butler recently told delinquent payers in court to save their holiday spending money and put it toward court fees.

"That's the best gift you can give yourself," the judge said.

But Eric Hsu, the bicounty's indigent defense coordinator, said his concern is a person who's below the poverty level because of economic and social circumstances shouldn't just be sent to jail for unpaid fines and be treated differently than a person with the means to immediately write a check.

\$50 a day for sitting in jail

Benton County's five District Court judges contend the practice remains an effective deterrent for people who drag their feet on paying court costs and fines.

"Fines are exactly how they sound -- punishment. ... They're given a fine and if they can't or won't pay it, there are alternatives" like work crews or straight jail time, Ingvalson said.

"Our function is not generating revenue. Our function is to modify behavior, and currently we view this policy as a means of doing that."

They say there's no consequence on criminal cases if they're just sent to collection or managed in-house. That's the practice in most courts, but it also involves charging interest and paying collection agency fees.

Benton County District Court took in \$9.8 million in revenue in 2012 and \$7 million in the first eight months of this year, according to online caseload reports.

That includes all misdemeanor and gross misdemeanor cases and civil infractions, like speeding tickets, filed in Kennewick, Richland, West Richland and Prosser and in rural Benton County.

Currently, inmates burn off their debt at \$70 a day if they're serving on a work crew and \$50 a day if they're just sitting in jail, according to a resolution updated by county commissioners in 2010. That means a person who owes \$1,000 would have to do a little more than 14 days on a work crew or 20 days sitting in jail to eliminate his debt.

Meanwhile, the cities are charged a daily bed rate of \$68.59 for each of their inmates. The fee covers the cost of housing and feeding them and jail operations.

Kennewick City Attorney Lisa Beaton, Kennewick Police Chief Ken Hohenberg, Richland police Capt. Mike Cobb and Sheriff Steve Keane all agree that the amount being credited toward the fines versus the daily charge to keep a non-violent offender locked up "doesn't make dollars and sense."

'A revolving charge account'

Judges say a majority of Tri-Citians ordered to serve out their fines are repeat offenders with multiple cases and, despite having their payments restarted numerous times, they treat the court like "a revolving charge account" and refuse to pay.

The average time served for delinquent fine payment is two months or less, they say.

A few people actually ask to be on a work crew or in jail if they know they won't ever have the money and want to put the legal financial obligations behind them.

Traffic offenses don't fall under the policy for jail time because they're a civil penalty, but a person can have their driver's license suspended by the state Department of Licensing for failing to pay tickets. Driving with a suspended license and DUIs are criminal matters.

The policy came up for discussion at a county commission meeting last month after Benton County Prosecutor Andy Miller suggested the judges consider hiring an independent attorney for a lawsuit because he wasn't comfortable with defending the practice.

District Court Judge Terry Tanner and Sheriff Keane were sued by a Kennewick woman who claims warrants should not have been issued for her arrest since she wasn't properly notified that she could have a public defense lawyer for a hearing and she can't pay her fines on two cases because she's on limited disability income.

The warrants were quashed during the legal battle. Then Judge Butler in a separate hearing found that Briana Wakefield is not indigent, but said she could serve out her fines on a work crew if she doesn't have the money.

Wakefield, who's represented by Northwest Justice Project, has appealed that decision to Benton County Superior Court hoping for a finding that she in fact does not have the resources to pay her fines.

Ingvalson said the meeting later this month with the county board will follow up on the issue and see if the commissioners still support the long-standing county policy on converting fines to time, or if the court needs to find another tool to get payment.

"There's no quick answer. There's no right or wrong," said Judge Joe Burrowes, District Court's presiding judge. "Each case before us has to be evaluated and treated with the uniqueness that it is, and we try to balance the issues to include the defendant's rights and the costs of doing work crew or going to jail."

'They're treated like adults'

In 2012, Benton County's work crews did a total of 68,000 hours in the community. Those who were on the crews to clear their legal financial obligations worked off more than \$123,000 of fines, Sheriff Keane said.

The sheriff's department runs five work crews: two for Kennewick; one in Richland; one that's split between Benton County, the Department of Ecology and West Richland; and one at the Benton County Fairgrounds. Each crew costs \$125,000 a year, which is paid for by the participating municipalities and agencies.

Keane said that's a benefit to the cities and county because instead of hiring one person to do the work, they're getting the job done at a faster pace by eight to 12 inmates on a nine-hour work day over four days.

"It teaches these people work ethic. They're held responsible, they're treated like adults, and I think citizens like to see inmates in their community working to clean things up and holding them accountable," the sheriff said. "What we really want is for them to become productive members of society."

However, Keane cautions people who may think that cutting out the jail time aspect of the District Court policy will allow him to reduce staff. He said it would take a drastic population reduction to close a pod, which houses 64 inmates.

Keane and his fellow top law enforcers told the Herald that the discretion should not be taken away from the judges, but from each of their entity's perspectives it is a good idea to explore viable options for the policy.

"The taxpayers are the ones ultimately paying for these things," Keane said. "Sure we want to hold people accountable, but we don't want to waste money either."

Read more here: <http://www.tri-cityherald.com/2013/11/02/2655770/paying-district-court-fines-with.html#storylink=cpy>